

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JERRY SEXTON, #05852-084,

Petitioner,

v.

ACTION NO. 2:19cv292

JUSTIN ANDREWS,
Warden,

Respondent.

ORDER

This matter was initiated by a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. Petitioner Jerry Sexton—a federal inmate housed at the Petersburg Federal Correctional Complex—was convicted in the United States District Court for the Western District of Virginia and the United States District Court for the District of South Carolina. *Id.* at 2. Mr. Sexton originally filed his Petition in the United States District Court for the District of South Carolina, and the Petition was transferred to this Court on June 3, 2019. ECF Nos. 1, 15.

The Court ordered Respondent to file an Answer to the Petition and, if deemed appropriate, a motion to dismiss within sixty days. ECF No. 24 at 2. On August 28, 2020, Mr. Sexton filed a motion for default judgment requesting that the Court grant the relief requested in the Petition due to respondent's failure to timely respond. ECF No. 25.

On September 3, 2020, the Court ordered Respondent to show cause by September 11, 2020, why an Answer has not been filed in this case. ECF No. 26 at 1. On September 11, 2020, Respondent filed a Response to the Show Cause Order, a motion for extension of time to respond, and a motion to dismiss for lack of jurisdiction. ECF Nos. 28–31. The Response to the Order to

Show Cause explained that “[d]ue to an unintentional administrative error at the United States Attorney’s Office, a case file was never opened and the assigned Assistant United States Attorney in the Criminal Division was not made aware of the case assignment.” ECF No. 28 at 3. Further, “[t]he error was not identified until the Court issued its Order to Show Cause.” *Id.*

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge’s formal Report and Recommendation filed December 3, 2020, recommends denying Sexton’s motion for default judgment. ECF No. 34. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired. This Court accepts the findings and recommendations set forth in the Report and Recommendation, and it is **ORDERED** that Mr. Sexton’s motion for default judgment, ECF No. 25, is **DENIED**.

Mr. Sexton has failed to demonstrate “a substantial showing of the denial of a constitutional right,” and the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 327, 335–36 (2003) (quoting 28 U.S.C. § 2253(c)(2)). Mr. Sexton is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a).

If Sexton intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty days from the date of this Final Order. Sexton may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order **DENYING** Mr. Sexton's motion for default judgment, ECF No. 25, to Mr. Sexton and to counsel of record for respondent.

/s/

Arenda L. Wright Allen
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 13, 2021